

**DEPARTMENT OF CORPORATIONS**  
*California's Investment and Financing Authority***Preston DuFauchard**  
**California Corporations Commissioner**  
**Sacramento, California**IN REPLY REFER TO:  
FILE NO: PRO 27/03**NOTICE OF CHANGES TO PROPOSED AMENDMENTS OF RULES OF  
THE CALIFORNIA CORPORATIONS COMMISSIONER UNDER THE  
CORPORATE SECURITIES LAW OF 1968  
(15-DAY COMMENT PERIOD)**

To Interested Persons:

On August 31, 2007, the California Corporations Commissioner published a Notice of Proposed Changes regarding the proposed amendments to Sections 260.231, 260.235, 260.237, 260.237.2, 260.238, and 260.241.3; the repeal of Section 260.327.1; and the adoption of Sections 260.235.5, 260.238.1, 260.238.2, 260.238.3 and 260.238.4 of the Commissioner's rules under the Corporate Securities Law of 1968 (see California Regulatory Notice Register 2007, No. 35-Z).

Modifications have been made to the text of the regulations dated August 8, 2007, and therefore a copy of the modified text is being made available to the public in accordance with the requirements of Government Code Section 11346.8(c). The text showing modifications to Sections 260.231, 260.235, 260.237, 260.237.2, 260.238, 260.241.3, 260.235.5, 260.238.1, 260.238.2, 260.238.3 and 260.238.4 is attached. Additions are shown by double underlining and deletions are shown by double strike-out.

**REASONS FOR CHANGES**

The proposed text sets forth a number of significant changes. Generally, the changes are intended to maintain investor protections, reduce administrative burdens on investment advisers, and in light of ongoing and potential future actions by federal regulators, to minimize inconsistencies with Securities and Exchange Commission (SEC) positions.

More specifically, the changes to the initially proposed language are intended to:

- Increase consistency with federal positions by avoiding "piecemeal" codification of SEC no-action and interpretive letters in the form of prescriptive requirements that do not fully reflect current SEC positions. In particular, rather than uniformly imposing mandatory performance-based advertising requirements based on the Clover Capital Management SEC no-action letter, the revised text incorporates
  - ♦ Securities ♦ Franchises ♦ Off-Exchange Commodities ♦ Investment and Financial Services ♦
  - ♦ Independent Escrows ♦ Consumer and Commercial Finance Lending ♦ Residential Mortgage Lending ♦

the substance of the SEC letter as a voluntary safe harbor. Similarly, in response to comments, the revised text deletes proposed Section 260.238.2 (the “soft dollar rule”). This change is made in response to comments indicating that an attempt to distill SEC “soft dollar” guidance into a rule may result in increased inconsistencies with federal positions. Synthesizing lengthy nuanced SEC releases, in the form of regulations may not comprehensively and consistently regulate “soft dollar” arrangements.

- Consistently and effectively measure investment adviser minimum financial requirements. For example, the “positive current ratio” metric is no longer included in the proposed amendment to Section 260.237.2.
- Significantly increase flexibility with regard to the nature and characteristics of business continuity plans that investment advisers are required to adopt under proposed Section 260.238.4.
- Ease the administrative burden on investment advisers. Securities holdings and transactions reporting requirements in proposed Section 260.238.1 are synthesized and condensed. Additionally, retention of custodial account statements (brokerage statements) will generally suffice to meet reporting requirements.
- Make other technical and clarifying changes.

The initial statement of reasons for the proposed action containing all the information upon which the proposal is based is available from the Office of Legislation and Policy in the Department of Corporations. (Request Document PRO 27/03-C.) This document is also available at [www.corp.ca.gov](http://www.corp.ca.gov). As required by the Administrative Procedure Act, the Office of Legislation and Policy maintains a hearing file containing all the information upon which the proposal is based. The rulemaking file is available for public inspection during regular business hours.

## **15-DAY COMMENT PERIOD**

Any interested person may submit written comments regarding the changes from the originally proposed amendments by written communication addressed to the California Corporations Commissioner, Attn: Karen Fong, Staff Services Analyst, Office of Legislation and Policy, 1515 K Street, Suite 200, Sacramento, California 95814 and received on or before 5 p.m., July 8, 2008. Written comments may also be sent to Karen Fong via electronic mail at [regulations@corp.ca.gov](mailto:regulations@corp.ca.gov) or via fax at (916) 322-5875.

The proposed modifications to the Commissioner's rules in the text accompanying this notice are not yet effective, and will not be effective until approved by the Office of Administrative Law and filed with the Secretary of State in accordance with Government Code Section 11349.3. Inquiries concerning these changes may be directed to Karen Fong or Tanya Bosch at (916) 322-3553.

Dated: June 20, 2008  
Sacramento, California

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Colleen E. Monahan  
Deputy Commissioner  
Office of Legislation and Policy